

Opinion No. 44-4552

July 26, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar, Chief, Division of Liquor Control, Bureau of Revenue, Santa Fe, New Mexico

In your letter dated July 25, 1944, you enclose a letter from Jess Thorn in Deming relative to liquor being brought into New Mexico from Palomas, Mexico, in which he inquires concerning the state tax upon such liquor. It is my understanding that the liquor being brought in is brought by individuals for their personal use. You request an opinion as to whether such liquor may be taxed.

Section 61-1008, subsection D of the 1941 Compilation provides as follows:

"It shall be a violation of this act for any citizen or resident of the State of New Mexico to bring into this State, for the purpose of private use or consumption, more than one pint of alcoholic liquor within any 30-day period."

In *State vs. Frank Martinez and Apolinar Paz*, 149 Pac. 2d, 124, the Supreme Court of New Mexico had this section under consideration and in their decision the Court held this section to be unconstitutional in that it discriminates against residents of New Mexico and denies to them the equal protection of the laws. In its opinion the Court states that there is no prohibition in the law against a non-resident or non-citizen of New Mexico from bringing into the State any quantity of liquor for his private use or consumption. Since the Court has held the above mentioned section unconstitutional, there is now no prohibition against either a resident or non-resident from bringing into the State any quantity of liquor for the same purpose. Under the present law, no tax may be collected from individuals bringing in liquor for their own consumption. If a tax is desirable, the matter is one for the Legislature to correct. I am returning herewith the letter to you from Mr. Thorn.